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IN THE

Supreme Court of the United States

October Term, 1969
No. 1020

GERSHON L. LEWIS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PETITION FOR REHEARING.

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The petitioner herein respectfully moves this Court for an order, (1) vacating its denial of the Petition for Writ of Certiorari entered on February 27, 1970, and (2) granting the Petition. As grounds for this motion, petitioner states the following:

In his Reply Brief petitioner had only briefly alluded to the pending case of *Donaldson, etc. v. United States, et al.*, October Term, 1969, No. 942. Since this Reply Brief was filed three days prior to this Court's telegraphic advice that the Petition for Certiorari had been denied in the instant proceedings, it is not known whether the Court was aware of the relationship be-

tween these cases and petitioner's request that the instant proceedings be heard and considered at the same time as *Donaldson,* should a Writ of Certiorari be granted in that case.

Petitioner's counsel has been advised that a Writ of Certiorari has now been granted in *Donaldson* and petitioner respectfully requests that this Court reconsider its denial of certiorari in the instant proceedings in light of such action in *Donaldson.*

Donaldson and the instant proceedings are clearly and closely interrelated, since the purpose for the abuse of the grand jury and its process in the instant proceedings was the government's attempt to avoid the questionable conduct which this Court will now consider in *Donaldson, i.e.,* whether it is constitutionally impermissible for criminal investigators of the Internal Revenue Service to utilize administrative summonses for the purpose of obtaining evidence for use in criminal tax proceedings. In both *Donaldson* and the instant proceedings, the government has attempted to avoid the normal requirements otherwise applicable to lawful searches and seizures that before a citizen's privacy may be violated in a criminal investigation by government investigators who demand his testimony or his records, either a disinterested judicial officer must first be satisfied that probable cause exists for the issuance of a search warrant, *or* an independent grand jury believes such examination should take place and authorizes the utilization of its process to that end.

In both *Donaldson* and the instant proceedings this was not done and unless this Court prohibits the claimed abuse of the grand jury's process which is presented in

the instant proceedings, any restrictions which this Court might impose on criminal investigators' use of administrative summonses in *Donaldson* would be illusory, since the government would simply switch its investigative procedure from that used in *Donaldson,* (administrative summonses), to that used in the instant proceedings, (an impotent and totally controlled grand jury whose duties are being usurped by Internal Revenue Service agents sworn in as "agents of the grand jury").

Thus, unless this Court considers the question of this attempt to avoid normal constitutional safeguards as presented in the instant proceedings, the government will have available to it, in reserve, an improper method which has been utilized in the past and will be utilized in the future should its challenged conduct in *Donaldson* be held constitutionally impermissible. This Court should not permit this to occur, since this would have the effect of demeaning its decision in *Donaldson*. Perhaps equally important, the government should not be left free to trifle with long-established and well-conceived rules governing the grand jury.

The government brought on the instant proceedings when contrary to all previoausly established rules concerning the grand jury and the requirements for a validly isued search warrant, it chose to utilize an improper and clever expedient which had the effect of denying the petitioner the right to be undisturbed unless either a disinterested judicial officer or an independent grand jury authorized or required his production of books and records for examination. This Court's tacit approval of this expedient by refusing to grant a Writ of Certiorari would constitute a backward step for individual freedom in this country.

For these various reasons, therefore, the denial of certiorari should be reconsidered to the end that the instant proceedings should be heard and resolved simultaneously with *Donaldson.*

Respectfully submitted,

WALTER S. WEISS,
Counsel for Petitioner.

Certificate of Counsel.

As counsel for petitioner I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58(2).

March 2, 1970.

WALTER S. WEISS,
Counsel for Petitioner.